



U.S. Citizenship
and Immigration
Services

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FILE:

[WAC 05 333 70604]

OFFICE: CALIFORNIA SERVICE CENTER DATE: DEC 13 2006

IN RE:

Applicant:

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC), and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Somalia who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish he was eligible for late initial registration.

On appeal, counsel for the applicant submits a brief statement.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

On September 16, 1991, the Attorney General designated Somalia under the Temporary Protected Status (TPS) program for a 12-month period that expired on September 16, 1992. That initial designation was extended each subsequent year. On September 17, 2001, Somalia was re-designated as a country eligible for TPS. The re-designation of Somalia for TPS was subsequently extended until September 17, 2006. The initial registration period for Somalians for this re-designation of TPS was from September 4, 2001 to September 17, 2002. The applicant did not file his TPS application until August 26, 2005, more than two years and 11 months after the re-designation period had ended.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants must submit all documentation required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

A review of the record reveals that, on July 22, 1997, an Immigration Judge denied the applicant's request for asylum and for withholding of deportation in the United States, and granted the applicant voluntary departure on or before September 22, 1997, with an alternate order of deportation to Somalia. An appeal from that decision to the Board of Immigration Appeals (BIA) was administratively closed on January 15, 2002. There is no indication in the record that the applicant ever properly submitted a request to reinstate the BIA proceedings.

On appeal, counsel asserts that the applicant is eligible for late registration under 8 C.F.R. § 244.2(f)(2)(ii) because he had an application for asylum pending during the initial registration period. Counsel further asserts that the fact that the BIA administratively closed the applicant's asylum case does not mean that the asylum application was denied; rather, it means that it is pending as a matter of administrative convenience and that the BIA would not take any further action on the case.

While the applicant's pending application for asylum rendered him eligible for late registration, CIS regulations also require a late registration to be filed within a 60-day period immediately following the expiration or termination of conditions that made the applicant eligible for late registration. 8 C.F.R. § 244.2(g). In this case, the applicant's asylum application was denied by an Immigration Judge on July 22, 1997, and an appeal from that decision was administratively closed by the BIA on January 15, 2002; therefore, his 60-day period in which to file a late initial application for TPS actually expired on March 14, 2002. His TPS application was not filed until August 26, 2005.

The applicant did not file his TPS application during the initial registration period or during the allotted 60-day late registration period described in 8 C.F.R. § 244.2(g). Consequently, the director's decision to deny the application for Temporary Protected Status will be affirmed.

An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.